

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS BOARD OF)	
REGISTRATION IN PHARMACY,)	
ET AL,)	
Defendants-Appellants)	
)	
v.)	C.A. NO. 05-30224-MAP
)	(Bankruptcy Appeal)
DRUG ASSIST HEALTH)	
SOLUTIONS, INC., d/b/a)	
SHOPPERS DRUG,)	
Plaintiff-Appellee)	

MEMORANDUM AND ORDER

January 31, 2006

PONSOR, D.J.

This is an appeal of an order issued by the Bankruptcy Court on August 12, 2005 granting preliminary injunctive relief to Appellee, Drug Assist Health Solutions, Inc. d/b/a Shoppers Drug ("Drug Assist"). The preliminary injunction enjoined Defendants, and specifically the Massachusetts Board of Registration in Pharmacy ("Board"), "from taking or continuing any act . . . to enforce against Drug Assist Health Solutions, Inc. . . . the final decision and revocation order of the Board of Registration in Pharmacy . . . of May 27, 2005 revoking [Drug Assist's] pharmacy license"

The issuance of the preliminary injunction violated 11 U.S.C. § 362(b)(4), which states that the filing of a

bankruptcy petition does not stay "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power." As the First Circuit recently explained:

This exception discourages debtors from submitting bankruptcy petitions either primarily or solely for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare

In Re McMullen, 386 F.3d 320, 324-25 (1st Cir. 2004).

In this case, the action of the Board in revoking the pharmacy license of Drug Assist was clearly an expression of governmental regulatory power intended, in the Board's mind, to enjoin conduct threatening the public welfare. It is all but conceded that the filing of the bankruptcy petition was intended to assist the debtor in evading or postponing the impact of the license revocation. In these circumstances, the effort by counsel for Drug Assist to invoke 11 U.S.C. § 105(a), and to argue that the Bankruptcy Court's equitable powers supported issuance of the preliminary injunction, is unpersuasive. This interpretation of § 105(a) would eviscerate § 362(b)(4) and undercut the holding in In Re McMullen.

For the foregoing reasons, the decision of the

Bankruptcy Court of August 12, 2005 is hereby REVERSED. The Bankruptcy Court's preliminary injunction will stay in force, to allow sensible transition, only through February 28, 2006. Thereafter, the preliminary injunction will be void, and the revocation order of the Board will have full effect, unless it is stayed either by the Board itself or by the Massachusetts Supreme Judicial Court.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge

Publisher Information

**Note* This page is not part of the opinion as entered by the court.
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3:05-cv-30224-MAP In Re: Drug Assist Health Solutions, Inc. et al
Michael A Ponsor, presiding
Date filed: 10/17/2005 Date of last filing: 01/31/2006

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